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[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

[REDACTED]

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**PRELIMINARY RECITALS**

Pursuant to a petition filed November 24, 2015, under Wis. Stat., §49.45(5), to review a decision by the Dane County Dept. of Human Services to recover Medical Assistance (MA), a hearing was held on December 16, 2015, by telephone.

The issue for determination is whether the county correctly determined an MA overpayment.

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: [REDACTED]  
Dane County Dept. of Human Services  
1819 Aberg Avenue  
Madison, WI 53704-6343

**ADMINISTRATIVE LAW JUDGE:**

Brian C. Schneider  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Dane County.
2. Petitioner applied for BadgerCare Plus (BC+) MA on June 20, 2014. She reported then that her job at BSG ended on June 10, 2014.
3. By a notice dated July 11, 2014, the county informed petitioner that she was eligible for BC+ effective June 1, 2014, with no monthly premium. The notice also told petitioner that she was eligible for the maximum monthly amount of FoodShare for a one-person household. The notice also told her that she should report to the agency if her monthly income rose above \$972.50.

- [REDACTED]
4. Petitioner began to work at [REDACTED] on August 28, 2014. Her monthly income rose above \$972.50 in October, 2014.
  5. Petitioner reported the [REDACTED] job on November 7, 2014. She also reported that a job at [REDACTED] ended November 4. An employer verification form from [REDACTED] was filed stating that petitioner was working 25 hours per week at \$7.50 per hour (approximately \$750 per month).
  6. Petitioner's actual income at [REDACTED] in October was \$713.78. Along with checks from [REDACTED] total income for October was \$999.53.
  7. In November the [REDACTED] income increased to \$870.25. Petitioner filed a "Request for Assistance" on November 24, and on December 2 she had an interview with an agency representative where she reported that the [REDACTED] income increased. BC+ ended December 31, 2014 due to the increased income.
  8. The county determined that petitioner was overpaid BC+ in December because she did not report being over \$972.50 in October, 2014. By a notice dated September 8, 2015, the county informed petitioner that she was overpaid \$428 in MA in December, 2014, claim no. [REDACTED]. The claim was for all MA paid on petitioner's behalf that month.
  9. Petitioner returned the overpayment notice to the county agency on October 8, 2015, with her name signed directly under the information regarding a fair hearing. Petitioner intended to appeal when she returned that notice. The county worker realized petitioner's intent when she spoke to petitioner in November, and she then forwarded the appeal to the Division of Hearings and Appeals. The appeal was received by the Division of Hearings and Appeals on November 24, 2015.

### DISCUSSION

As a first point, an appeal of a negative action concerning MA must be filed within 45 days of the action. Wis. Stat. §49.45(5)(a); Wis. Admin. Code, §HA 3.05(3)(a). An MA appeal must be made in writing; it cannot be made orally unless it is then reduced to writing. Wis. Admin. Code, §HA 3.05(2)(a). The appeal can be made to the Division of Hearings and Appeals or to the county agency. The date of filing is the date the written appeal is received by the agency or the postmark date, whichever is earlier. Admin. Code, §HA 3.05(3)(c).

In this case the Division of Hearings and Appeals did not receive the appeal until after the 45-day deadline, but the county agency received it within the time limit. The county agency did not act on it immediately because it was not clear that petitioner intended to appeal. I will accept the appeal as timely because petitioner intended to appeal and it was received in writing within the 45-day time limit.

MA overpayment recovery is authorized by Wis. Stat., §49.497(1):

(a) The department may recover any payment made incorrectly for benefits provided under this subchapter or s. 49.665 if the incorrect payment results from any of the following:

1. A misstatement or omission of fact by a person supplying information in an application for benefits under this subchapter or s. 49.665.
2. The failure of a Medical Assistance or Badger Care recipient or any other person responsible for giving information on the recipient's behalf to report the receipt of income or assets in an amount that would have affected the recipient's eligibility for benefits.

[REDACTED]

3. The failure of a Medical Assistance or Badger Care recipient or any other person responsible for giving information on the recipient's behalf to report any change in the recipient's financial or nonfinancial situation or eligibility characteristics that would have affected the recipient's eligibility for benefits or the recipient's cost-sharing requirements.

See also the department's BC+ Handbook, Appendix 28.2. The overpayment must be caused by the client's error. Overpayments caused by agency error are not recoverable.

An overpayment is determined as follows: "If the case was ineligible for BC+, recover the amount of medical claims paid by the state and/or the capitation rate. Use the ForwardHealth interChange data from the Total Benefits Paid by Medicaid Report(s). Deduct any amount paid in premiums (for each month in which an overpayment occurred) from the overpayment amount." Handbook, App. 28.4.2.

Petitioner's income rose over \$972.50 in October, but the total income was a combination of a discontinued job and a new job at [REDACTED]. Petitioner reported the [REDACTED] job on November 7, 2014, which was within the ten-day limit for reporting income over the limit. The verification of income from [REDACTED] stated that petitioner's expected income was \$750 per month; in October petitioner's actual income from [REDACTED] was \$713, so when petitioner made the report in November the report was accurate.

Petitioner's [REDACTED] income increased in November, 2014, and she reported the increase during a December 2 interview. The increase caused petitioner's BC+ to close January 1, 2015.

I conclude that petitioner was not overpaid due to a failure to report an increase in income. Petitioner reported the [REDACTED] job timely in early October. Her case remained open because the expected income from [REDACTED] was below \$972.50, and the income from the former job ended. Petitioner then reported that the [REDACTED] income increased timely within ten days of the increase.

Petitioner testified that she was unaware that she was receiving BC+ in 2014. Her lack of knowledge is irrelevant. I conclude that she reported her income correctly regardless of her knowledge of her eligibility.

### CONCLUSIONS OF LAW

Petitioner is not liable for a BC+ overpayment in December, 2014 because she reported her income changes timely.

**THEREFORE, it is**


**ORDERED**

That the matter be remanded to the county with instructions to rescind overpayment claim no. [REDACTED], and to cease recovery of it. The county shall do so within 10 days of this decision.

### **REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and



why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

### **APPEAL TO COURT**

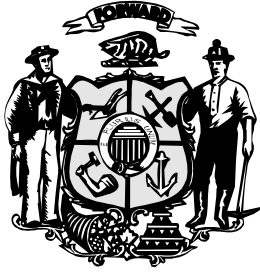
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,  
Wisconsin, this 22nd day of December, 2015

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\sBrian C. Schneider  
Administrative Law Judge  
Division of Hearings and Appeals



## State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on December 22, 2015.

Dane County Department of Human Services  
Public Assistance Collection Unit  
Division of Health Care Access and Accountability